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January 19, 2000

BY HAND

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
12th Street Lobby, TW-A325
Washington, D.C. 20554

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JAN 19 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Reply Comments of the Commonwealth of the
Northern Mariana Islands; CC Dkt. No. 96-45

Dear Ms. Salas:

Enclosed for filing herewith is an original plus four (4) copies of the Reply Comments of the Commonwealth of the Northern Mariana Islands in the above-referenced proceeding. An additional copy has also been included for file-stamp purposes. In addition, these Comments are also being submitted simultaneously on diskette in accordance with ¶ 152 of the Commission's *Further Notice of Proposed Rulemaking* in this proceeding.

Questions should be directed to the undersigned.

Sincerely,



Thomas K. Crowe
C. Jeffrey Tibbels,
Counsel for the Commonwealth of
the Northern Mariana Islands

Enclosures

cc: Sheryl Todd (w/ diskette)
International Transcription Service (w/ diskette)

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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OFFICE OF THE SECRETARY

In the Matter of)
)
Federal-State Joint Board on)
Universal Service:)
Promoting Deployment and)
Subscribership in Unserved)
and Underserved Areas, Including)
Tribal and Insular Areas)

CC Docket No. 96-45

**REPLY COMMENTS OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

The Commonwealth of the Northern Mariana Islands ("Commonwealth"), by its attorneys, respectfully submits the following Reply Comments in response to the Commission's *Further Notice of Proposed Rulemaking* released on September 3, 1999 in the above captioned matter.¹

I. INTRODUCTION

In its initial Comments, the Commonwealth demonstrated that the Commission should provide additional support for rural health care providers by re-designating the Commonwealth's "urban" area as an out-of-state point such as Honolulu or San Francisco²; should include the

¹ *In re* Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, *Further Notice of Proposed Rulemaking*, CC Dkt. No. 96-45, FCC 99-204 (Sept. 3, 1999) ("FNPRM"); Common Carrier Bureau Announces Extension of Comment and Reply Comment Dates for Unserved, Underserved, Tribal, and Insular Areas Rulemaking Proceeding, CC Dkt. No. 96-45, DA 99-2607, *Public Notice* (November 22, 1999).

² See Comments of the Commonwealth at 4-8.

Commonwealth in the Universal Service Monitoring Program³; and should formally adopt the proposed definition of "insular areas" as those islands that are territories or commonwealths of the United States.⁴

As demonstrated below, the Commonwealth – like other insular areas – endures severe climatic, geographic and demographic hardships which serve to increase costs and deter investment in telecommunications infrastructure. These factors, when considered in conjunction with the Commonwealth's historically low *per capita* income, illustrate the Commonwealth's critical need for additional universal service support.

The Commonwealth agrees with Alaska and NRTA/OPASTCO that further support for Internet access services is warranted. The Commonwealth urges the Commission to reexamine its almost three-year old assessment of Internet access services and include high quality broadband services within those services eligible for support. Toward this end, the Commonwealth reminds the Commission that it has undertaken to convene a Federal-State Joint Board to review its definition of universal service by January 1, 2001.

The Commonwealth also shows that the record in this proceeding overwhelmingly demonstrates that the rural health care program should be modified to bring meaningful support to the Commonwealth and other insular areas.

Finally, the Commonwealth concurs with the State of Alaska ("Alaska") that the definition of "underserved" areas should be directly linked to penetration rates. The Commonwealth

³ See *id.* at 9-11.

⁴ See *id.* at 12.

alternatively proffers a two-tiered system of universal service support such that the neediest regions in the United States can receive commensurate support.

II. LIKE OTHER INSULAR AREAS, PROVIDERS IN THE COMMONWEALTH FACE UNIQUE FACTORS THAT INCREASE COSTS

Several commenting parties have demonstrated that there are a variety of climatic, geographic, and demographic factors unique to insular areas that render the provision of telecommunications services difficult and costly.⁵ As shown below, not only do these factors apply equally with respect to the Commonwealth, but the exceptionally low *per capita* income level in the Commonwealth presents unique and pressing affordability concerns.

Guam has commented that insular areas are subject to disastrous weather conditions such as typhoons that frequently destroy telecommunications infrastructure,⁶ and PSCUSVI has noted that insular areas have salt water environments that increase wear-and-tear on exposed facilities and equipment.⁷

⁵ See Comments of the Commonwealth at 2, 8 and Exhibit at 3, 5; Comments of the Public Service Commission of the U.S. Virgin Islands ("PSCUSVI") at 3-5; Comments of the Government of Guam ("Guam") at 3; Comments of the Puerto Rico Telephone Company ("PRTC") at 4-10; Comments of the American Samoa Telecommunications Authority ("ASTCA") at 7.

⁶ See Comments of Guam at 3.

⁷ See Comments of PSCUSVI at 4; Comments of PRTC at 7-8.

PRTC, PSCUSVI and Guam have all commented that insular areas consist of mountainous terrain that makes it difficult and expensive to establish telecommunications infrastructure and serve sparsely populated interior areas.⁸

Insular areas are also geographically isolated from the mainland United States. The Commonwealth, for example, is among the most distantly located, situated some 3,300 miles from Honolulu and 5,625 miles from San Francisco.⁹ All of the above-listed factors contribute heavily to the existence of substantial additional costs in offering telecommunications services, including costs associated with insurance, maintenance and transportation.

Insular areas also face unique demographic challenges. The population of the Commonwealth, for example, is spread out among three of its fourteen islands, Saipan (86.7% of the population), Rota (8.2%) and Tinian (5.1%).¹⁰ Thus, not only are citizens of the Commonwealth isolated from the United States by distance, they are isolated from each other by the Pacific Ocean as well.¹¹ These geographic realities make telecommunications services in the Commonwealth even more important, and unfortunately, even more expensive.

⁸ See Comments of PRTC at 4; Comments of PSCUSVI at 3-4; Comments of Guam at 3.

⁹ See Exhibit to the Comments of the Commonwealth ("Commonwealth Exhibit") at 2.

¹⁰ See Commonwealth Exhibit at 3.

¹¹ This geographic isolation is compounded when one considers that the Micronesian Telecommunications Corporation ("MTC") (the monopoly local exchange service provider in the Commonwealth) charges \$0.15 per minute on inter-island calls within the Commonwealth. See CNMI OFFICIAL TELEPHONE DIRECTORY 14 (MTC 1999).

As though high costs alone do not pose enough of a challenge, the Commonwealth has one of the lowest *per capita* income levels in the United States.¹² In fact, it is the insidious combination of low income and the high costs of providing telecommunications services in the Commonwealth that make telecommunications service charges even less affordable.¹³ Clearly, the Commonwealth faces formidable expenses and challenges unique to itself that cannot be surmounted without considerable federal assistance.

III. THE COMMISSION SHOULD REVIEW THE DEFINITION OF UNIVERSAL SERVICE AND INCLUDE SUPPORT FOR HIGHER THAN VOICE GRADE INTERNET ACCESS

Some of the commenters have argued for more universal service support for Internet access.¹⁴ In this regard, the Commonwealth reminds the Commission that it has promised to convene a Federal-State Joint Board to review the definition of universal service on or before January 1, 2001 in order to address this issue.¹⁵

¹² See Commonwealth Exhibit at 3.

¹³ See Comments of the U.S. Department of the Interior, Office of Insular Affairs ("OIA") at 1. In discussing issues relating to affordability of telecommunications services in insular areas, the Commission stated that "insular areas generally have subscribership levels that are lower than the national average, largely as a result of income disparity, compounded by the unique challenges these areas face by virtue of their locations." *In re Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd.8776, at ¶ 112 (May 8, 1997)("Report and Order").

¹⁴ See, e.g., Comments of Alaska at 23-26; Comments of NRTA/OPASTCO at 12.

¹⁵ See *Report and Order* at ¶ 22; *In re Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, Report*, CC Dkt. No. 98-146, at ¶ 84 (February 2, 1999) ("*Advanced Services Report*").

The Commonwealth notes that the Commission has approved indirect universal service support for Internet access *via* support for voice grade access to the public switched network.¹⁶ However, the Commission declined, in its *Report and Order*, to expand universal service support for the "underlying information service" component of Internet access due to the fact that such information service did not comport with Section 254(c)(1)¹⁷ of the 1996 Act, which defines the criteria by which a telecommunications service can be considered a "core" service entitled to support.¹⁸ The Commission based this assessment on the fact that, at the time in 1997, a "substantial majority of residential customers" did not subscribe to Internet service by means of higher than voice grade quality access links, and that such services were not "essential to education, public health, or public safety."¹⁹

Due to the increasingly rapid deployment of advanced technologies (including the Internet itself), residential customer use of Internet service has increased enormously. Moreover, such services are now clearly essential to education, public health and public safety.²⁰ Consequently,

¹⁶ See *Report and Order* at ¶ 83.

¹⁷ 47 U.S.C. § 254(c)(1).

¹⁸ See *id.*

¹⁹ See *Report and Order* at ¶ 83.

²⁰ Just one example of how the Internet has become an important tool for ensuring public safety is how police departments across the country are utilizing the Internet as an essential medium for reporting crimes. See *e.g.*, Sacramento Police Department, <<http://www.sacpd.org>> (visited January 14, 2000); University of Wisconsin-Oshkosh Police Department, <<http://www.uwosh.edu/departments/up/>> (visited January 14, 2000); Coquille Police Department, <<http://www.cityofcoquille.com/online/CRIMEREPORT.htm>> (visited January 14, 2000).

the Commonwealth strongly urges the Commission to revisit its prior assessment of high quality Internet access services. The Commission itself, just nine months after the release of the *Report and Order*, recognized that a wide variety of broadband service providers (*i.e.*, satellite, DSL, cable, etc.) were investing billions of dollars in rolling-out high quality Internet access services to tens of millions of new consumers.²¹

As use of high quality broadband Internet access services for education, commercial, medical and informational purposes becomes the norm and not the exception, the Commonwealth urges the Commission to provide universal service support for such advanced services so that insular and underserved areas are not left out of the technological revolution. The growing importance of the Internet in society as a communications tool for education, research, public health and public safety make it critical that the Commission act now to provide support for high quality Internet access and give isolated areas vital, cost-efficient links to the outside world.

Thus, the Commonwealth urges the Commission to ensure that it reviews its definition of universal service by January 1, 2001 and to keep insular areas in mind as it does so.

IV. THE RURAL HEALTH CARE PROGRAM SHOULD BE MODIFIED

The record in the current proceeding overwhelmingly demonstrates that the current rural health care program fails to provide any meaningful support to the Commonwealth and other insular areas, and needs to be modified such that these areas can obtain desperately needed telemedicine services.²²

²¹ See *Advanced Services Report* at ¶¶ 34-44.

²² See Comments of the Commonwealth at 4-8 and Commonwealth Exhibit at 5-6; Comments of OIA at 2-3; Comments of ASTCA at 3-4; Further Comments of ASTCA at 1-3;

As a solution, insular areas and OIA uniformly request that the Commission designate, for purposes of rural telemedicine support, an urban area situated outside the borders of the insular areas - such as Honolulu, San Francisco or Los Angeles - as the relevant "urban" area for purposes of calculating the insular areas' rural telemedicine support.²³

As both the Commonwealth and ASTCA have shown, the Commission has the independent statutory authority under Section 254(h)(2)(A)²⁴ of the Telecommunications Act of 1996 ("1996 Act") to expand the current Rural Health Care Program²⁵ to designate an out-of-state urban locale for the insular areas.²⁶ Such a designation is consistent with the stated intent of Section 254(h) that rural health care providers have affordable access to telecommunications services that would allow them to provide medical services to all parts of the United States.²⁷

Comments of Guam at 3-4. Even the Commission has recently observed that rural health care providers in insular areas would not receive any real support under the program's current rules. *In re* Changes to the Board of Directors of the National Exchange Carrier Association, Inc. and Federal-State Joint Board on Universal Service, *Sixth Order on Reconsideration and Fifteenth Order on Reconsideration*, CC Dkt. Nos. 97-21 and 96-45, at ¶ 42 (November 1, 1999).

²³ See Comments of the Commonwealth at 6; Comments of OIA at 3; Further Comments of ASTCA at 10, 13; Comments of Guam at 4.

²⁴ 47 U.S.C. § 254(h)(2)(A) (1998).

²⁵ 47 C.F.R. § 54.609 (1998).

²⁶ See Comments of the Commonwealth at 7-8; Further Comments of ASTCA at 10-13.

²⁷ See Comments of the Commonwealth at 7. The U.S. Court of Appeals for the Fifth Circuit recently ruled that the Commission has the authority, under Section 254(h)(2)(A), to augment support to so-called "advanced services" for the provision of telemedicine not specifically enumerated in Section 254(h)(1)(A). *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 445-6 (5th Cir. 1999), *aff'g in part, rev'g in part, and remanding in part*,

**V. THE DEFINITION OF "UNDERSERVED"
SHOULD BE LINKED TO PENETRATION RATE**

Alaska has argued that the definition of the term "underserved" should be directly linked to penetration rates and that the "level of penetration that should qualify an area as 'underserved' should be a function of national norms."²⁸ The Commonwealth concurs in principle with Alaska's proposal, but suggests that it be refined to reflect a two-tiered threshold.

Under the Commonwealth's proposed two-tiered approach, Tier 1 would consist of those states, territories and commonwealths with penetration rates that fall a certain percentage beneath the national average.²⁹ Such states would receive additional support as "underserved" areas. In addition, a second tier would exist (Tier 2), consisting of those states, territories and commonwealths with penetration rates even lower than those under Tier 1 (*i.e.*, the very lowest penetration rates in the United States). These states would fit under the rubric of "severely underserved" areas and receive a comparatively greater level of support than Tier 1 states.

Thus, *via* the mechanisms of a two-tiered system, severely underserved states like the Commonwealth (with an overall penetration rate of 61%)³⁰ and "fairly" underserved states with much higher overall penetration rates (for example, 82%) would receive support commensurate

Report and Order.

²⁸ Comments of Alaska at 19. Indeed, the Commission has suggested that a possible definition of underserved could include an area where penetration rates that fall significantly beneath the national average. *FNPRM* at ¶ 118.

²⁹ Alaska suggests 18%, but the Commonwealth takes no position as to the exact threshold.

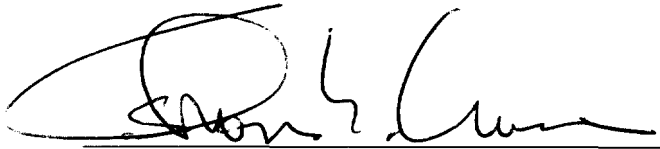
³⁰ See Commonwealth Exhibit at 5.

with their respective needs. In this way, the Commission can prevent the creation of technologically disadvantaged areas within the United States while still providing meaningful support for those states that are only a few percentage points below the national average and do not suffer from such alarmingly low penetration rates.

VI. CONCLUSION

As demonstrated above, the Commonwealth urges the Commission to adopt the proposals outlined by the Commonwealth both herein and in its initial Comments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas K. Crowe', written over a horizontal line.

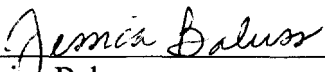
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COUNSEL FOR THE COMMONWEALTH OF
THE NORTHERN MARIANA ISLANDS

Dated: January 19, 2000

CERTIFICATE OF SERVICE

I, Jessica Baluss, a legal assistant with the Law Offices of Thomas K. Crowe, P.C., hereby certify that copies of the foregoing "Reply Comments of the Commonwealth of the Northern Mariana Islands" have been served by first class United States mail, postage prepaid, on all parties of record in this proceeding on this 19th day of January, 2000.



Jessica Baluss